

## **Business Associate Agreement**

This Business Associate Agreement (“**Agreement**”) is entered into between McLaren Health Plan, Inc., McLaren Health Plan Community, and Health Advantage, Inc. (each referred to as a “**Covered Entity**”) and [REDACTED] (referred to as “**Business Associate**”), collectively the “**Parties**” as of [REDACTED] (“**Effective Date**”).

### **Recitals**

- A.** McLaren Health Plan, Inc. and McLaren Health Plan Community are health maintenance organizations and are considered to be Covered Entities as defined under HIPAA.
- B.** Health Advantage Inc., is a third party administrator and is a considered to be a “Business Associate” under HIPAA.
- C.** For purposes of this Agreement, the parties intend that “Health Advantage, Inc.” will be referred to as “Covered Entity” and Business Associate will be referred to as Business Associate throughout this Agreement even when it is performing activities as a Subcontractor for Health Advantage, Inc.
- D.** The Parties have a relationship where Business Associate provides functions or activities on behalf of, or provides services to Covered Entity that involve the use or disclosure of PHI.
- E.** The purpose of this Agreement is to comply with the requirements in HIPAA and as amended by HITECH.
- F.** The Parties intend for this Agreement to control as it relates to PHI if there is an inconsistency between the terms of this Agreement or the underlying agreement.

The Parties therefore agree as follows:

### **1. DEFINITIONS**

Capitalized terms used, but not defined in this Agreement have the meaning provided in the HIPAA Privacy and Security Rules. For purposes of this Agreement, the following definitions apply:

“**Electronic Protected Health Information**” or “**E-PHI**” has the meaning given in 45 CFR §160.103, limited to the information that Business Associate creates, accesses, receives, maintains or transmits on behalf of Covered Entity in connection with the underlying agreement. E-PHI is a subset of PHI.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 and any amendments.

**“HIPAA Privacy and Security Rules”** means HIPAA, HITECH, 45 CFR parts 160-164, and any other implementing regulations pertaining to the privacy or security of PHI.

**“HITECH”** means the Standards for Privacy and Security of Personal Health Information in Subtitle D (Privacy) of the Health Information Technology Economic and Clinical Health Act of 2009.

**“Minimum Necessary”** means a Limited Data Set or, if needed, the minimum necessary PHI to accomplish the intended purpose of a use, disclosure or request.

**“Protected Health Information” or “PHI”** has the meaning given in 45 CFR §160.103, limited to the information that Business Associate creates, accesses, receives, maintains or transmits on behalf of Covered Entity in connection with the underlying agreement.

**“Secretary”** means the Secretary of the Department of Health and Human Services or his or her designee.

**“Subcontractor”** means a person or entity to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of the business associate.

## **2. BUSINESS ASSOCIATE OBLIGATIONS, PERMITTED USES AND DISCLOSURES**

**2.1 Subject to the HIPAA Privacy and Security Rules.** Business Associate is subject to and will comply with the requirements of the HIPAA Privacy and Security Rules. Business Associate will to the extent Business Associate carries out Covered Entity’s obligations under the HIPAA Privacy and Security Rules, comply with the requirements of the HIPAA Privacy and Security Rules that apply to Covered Entity in the performance of the obligation.

**2.2 Use and Disclosure of PHI.** Except as otherwise expressly limited in the Agreement, Business Associate may use or disclose PHI:

**A.** To perform functions, activities, or services for, or on behalf of, Covered Entity in connection with the Agreement and any other agreements in effect between Covered Entity and Business Associate.

**B.** For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that if Business Associate further discloses PHI:

**I.** The disclosure is Required by Law;

**II.** Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and the person agrees to notify Business

Associate of any instances of which it is aware in which the confidentiality of the information has been Breached; or

**III.** To report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1)

**C.** Business Associate must not use or further disclose PHI other than as permitted or required by the Agreement or as Required by Law.

**D.** Business Associate will not de-identify PHI without Covered Entity's prior written consent.

**E.** Business Associate will not perform Data Aggregation services without Covered Entity's prior written consent.

**2.3 Minimum Necessary.** Except as permitted by 45 C.F.R. §164.502(b)(2), Business Associate must limit its use, disclosure and requests of PHI under the Agreement to the Minimum Necessary.

**2.4 Safeguards.** Business Associate must use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement and will implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and E-PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Privacy and Security Rules.

**2.5 Mitigation.** Business Associate must immediately report to Covered Entity any use or disclosure of PHI not provided for by this Agreement. Business Associate must promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident, Breach, or a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the HIPAA Privacy and Security Rules.

**2.6 Reporting of Breaches.** Business Associate must immediately report to Covered Entity as soon as practicable, but not later than five (5) business days, after becoming aware of any Breach or reasonably suspected Breach of Unsecured Protected Health Information. Notwithstanding the foregoing, for a Covered Entity that contracts with CMS to provide Qualified Health Plan(s), Business Associate must report to the Covered Entity any Breach or reasonably suspected Breach of Unsecured Protected Health Information in the time periods necessary for Covered Entity to report the matter to CMS in accordance with the Covered Entity's agreement with CMS. In all cases, Business Associate will provide Covered Entity with all information related to the Breach or suspected Breach, including but not limited to the content requirements in 45 CFR §164.410. Business Associate will make members of its Workforce available and will cooperate with Covered Entity in any investigation related to a Breach.

**2.7 Reporting of Security Incidents.** Business Associate must immediately report to Covered Entity as soon as practicable, but not later than five (5) business days, after becoming aware of any Security Incident. Business Associate will provide Covered Entity with all information related to

the Security Incident, including but not limited to the content requirements in 45 CFR §164.410. Business Associate will make members of its Workforce available and will cooperate with Covered Entity in any investigation related to a Security Incident. All incidents of ransomware that involve PHI will be considered a Security Incident that is reportable to Covered Entity.

**2.8 Agent and Subcontractor Requirements.** Business Associate must ensure that any agent, including a Subcontractor, to whom it provides PHI received from or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to the information. Moreover, Business Associate must ensure that any agent or Subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's E-PHI as required by the HIPAA Privacy and Security Rules. Business Associate shall disclose to its Subcontractors only the Minimum Necessary to perform the Services as are delegated to the Subcontractor by Business Associate.

**2.9 Accounting of Disclosures.** Business Associate must document disclosures of PHI and information related to the disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Business Associate must provide to Covered Entity or an individual, in time and manner reasonably designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528.

**2.10 Access to PHI.** If Business Associate maintains PHI in a Designated Record Set for Covered Entity, Business Associate must provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

**2.11 Amendments to PHI.** If Business Associate maintains PHI in a Designated Record Set for Covered Entity, Business Associate must make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to in accordance with 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably designated by Covered Entity.

**2.12 Books and Records.** Business Associate must make its internal practices, books, and records related to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy and Security Rules. Covered Entity has the right to audit, investigate, monitor, access, review and report on Business Associate's use of any Covered Entity's PHI, with or without advance notice from Covered Entity.

**2.13 Prohibition on Sale of PHI.** Business Associate must not sell PHI or receive any direct or indirect remuneration, compensation, or other consideration in exchange for PHI. Business Associate must not transmit to any Individual any communication about a product or service that

encourages the recipient of the communication to purchase that product or service unless permitted to do so by HITECH Section 13405 and any implementing regulations.

**2.14 Part 2 Requirements.** If Business Associate uses, discloses, maintains, or transmits PHI that is protected by Part 2, Business Associate is bound by the Part 2 regulations. Any information Business Associate receives from Covered Entity that is protected by Part 2 is subject to protections that prohibit Business Associate from disclosing information protected by Part 2 without written consent of the individual, as required by Part 2. Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

**2.15 Prohibition on Session Replay Scripts.** Business Associate's website(s) will not contain analytics tools such as session replay scripts. Business Associate will redact, and abstain from gathering, data fields containing HIPAA information upon original configuration and each subsequent website update.

**2.16 Assistance in Litigation or Administrative Proceedings.** Business Associate will, at its cost, make itself, its Workforce members, agents, and Subcontractors, available to Covered Entity to testify as witnesses, or otherwise, if litigation or administrative proceedings are commenced against Covered Entity, its directors, officers, or Workforce members based upon a claimed violation of this Agreement or the HIPAA Privacy and Security Rules, except where Business Associate is named as an adverse party.

**2.17 Training.** Business Associate will provide training to its workforce and its Subcontractors and their workforce in accordance with HIPAA requirements. Business Associate will provide the training and evidence that the training was completed to Covered Entity upon Covered Entity's request.

**2.18 Ownership.** Business Associate has no ownership rights related to PHI, including any de-identified information or Limited Data Sets. Covered Entity is and remains the sole owner of all PHI and the de-identified information and Limited Data Sets created, if any.

**2.19 Red Flags Rule.** If Business Associate provides any billing, revenue cycle, or related services, Business Associate will: (a) use reasonable efforts to implement safeguards, policies, and procedures to prevent identity theft in accordance with the Red Flags Rule; (b) notify Covered Entity within two (2) business days of any 'red flag' or identity theft incident of which Business Associate becomes aware; (c) reasonably cooperate with Covered Entity to investigate and provide notice to victim(s) if required; and (d) mitigate, to the extent practicable, harm related to any identity theft incident related to Business Associate's services.

### **3. COVERED ENTITY OBLIGATIONS**

**3.1 Restrictions.** Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy and Security Rules if done by Covered Entity. Except as provided in 45 CFR §164.502(b)(2), Covered Entity will limit its use, disclosure and requests of PHI under the Agreement to the Minimum Necessary.

**3.2 Notifications to Business Associate.** Covered Entity will provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if the changes affect Business Associate's permitted or required uses and disclosures. Covered Entity will also notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522.

**3.3 Breach Notification.** Covered Entity will be responsible for complying with the Breach notification rules in HITECH §13402 and implementing regulations.

#### **4. TERM AND TERMINATION**

**4.1 Term.** This Agreement will remain in effect until all other agreements between Covered Entity and Business Associate are terminated, unless terminated earlier as provided in this Agreement.

**4.2 Termination.** Upon one party's knowledge of a material violation of this Agreement by the other party, the non-violating party must either: (a) provide an opportunity for the violating party to cure the violation or end the violation and terminate this Agreement (and any underlying agreement) if the violating party does not cure the violation or end the violation within ten (10) business days; (b) immediately terminate this Agreement (and any underlying agreement) if cure is not possible; or (c) if neither termination nor cure are feasible, the non-violating party must report the violation to the Secretary.

#### **4.3 Obligations of Business Associate upon Termination.**

**A.** Except as provided in Section 4.3(B), upon termination of this Agreement, for any reason, Business Associate must return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to PHI that is in the possession of Business Associate's Subcontractors or agents. Business Associate, its Subcontractors and agents must not retain any copies of PHI.

**B.** If Business Associate determines that returning or destroying the PHI is not feasible, Business Associate must provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, Business Associate must extend the protections of this Agreement to PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction unfeasible, for as long as Business Associate maintains the PHI.

**4.5 Injunctive Relief.** The Parties agree that the remedies at law for a violation of the terms of this Agreement may be inadequate and that monetary damages resulting from a violation may not be readily measured. Accordingly, in the event of a violation by either Party of the terms of this Agreement, the other Party will be entitled to immediate injunctive relief. Nothing in this Agreement will prohibit either Party from pursuing any other remedies that may be available to either of them.

## 5. GENERAL

**5.1 Regulatory References.** A reference in this Agreement to a section in the HIPAA Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

**5.2 Amendment.** The parties mutually agree to enter into good faith negotiations to amend this Agreement from time to time in order for Covered Entity or Business Associate to comply with the requirements of HIPAA and HITECH, as they may be amended from time to time, and any implementing regulations that may be promulgated or revised from time to time.

**5.3 Interpretation.** Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.

**5.4 Headings.** The headings of articles and sections contained in this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.

**5.5 No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, including but not limited to individuals whose PHI is created, received, used and/or disclosed by Business Associate in its role as business associate.

**5.6 No Assignment.** Covered Entity and Business Associate agree that this Agreement will not be assignable by either party except as expressly provided in this Agreement.

**5.7 Binding Effect.** This Agreement is binding upon the Parties and their successors and assigns.

**5.8 Survival.** The respective rights and obligations of Business Associate, including without limitation, the obligations of Business Associate under the termination section above, indemnification, ownership of PHI, reporting of Breaches and Security Incidents, will survive termination of this Agreement to the extent necessary to fulfill their purposes.

**5.9 Notice.** Any notices that may be required to be provided to each party under the terms of this agreement must be provided in writing by certified mail or through a nationally recognized overnight courier to the following addresses:

**For Covered Entities:**

McLaren Health Plan  
Attn: Privacy Officer  
G-3245 Beecher Road  
Flint, MI 48532

**For Business Associate:**

Attn:

**5.10 Entire Agreement.** This Agreement is the entire agreement between Covered Entity and Business Associate with respect to the matters covered in this Agreement. Covered Entity and Business Associate agree that there were no inducements or representations leading to the

execution of this Agreement, nor any other agreements between them, other than those contained in this Agreement.

**5.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together form one single document. If any signature is delivered by facsimile or by email delivery of a “.pdf”, the signature creates a binding obligation of the Party signing with the same effect as if it were an original.

**5.12 Indemnification.** Business Associate must defend and hold harmless Covered Entity and any Covered Entity affiliate, officer, director, employee, subcontractor, agent or other members of its workforce, from all claims, liabilities, damages, fines, penalties, costs, expenses (including without limitation, reasonable attorney fees, and costs related to notifications under 45 CFR 164.400 – 164.408), or judgments which arise as a result of Business Associate’s failure to meet any of its obligations under this Agreement.

**5.13 Insurance.** Business Associate represents and warrants that Business Associate has, and will maintain, at Business Associate’s own expense, cyber liability insurance in the amount of at least \$3,000,000 annual aggregate and liability insurance covering breach of Business Associate’s requirements under this Agreement and Business Associate’s negligent or intentional disclosure or Breach of PHI covered by this Agreement. At the request of Covered Entity, Business Associate must provide to Covered Entity proof of insurance coverage required by this Section.

**5.14 Prohibition of Offshore Disclosure.** Business Associate must not access, store, share, maintain, transmit or use or disclose PHI in any form through any medium with any entity or person, including Business Associate’s employees and Subcontractors, beyond the boundaries and jurisdiction of the United States.

**5.15 Governing Law and Venue.** For McLaren Health Plan, Inc., McLaren Health Plan Community and Health Advantage, Inc., this Agreement, the rights of the Parties, and all actions arising in whole or in part under or in connection with it, will be governed by and construed in accordance with the laws of the state of Michigan, without giving effect to any choice or conflict-of-law provision or rule that would cause the application of the laws of any other jurisdiction. A final judgment in any action will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**5.16 Several Liability.** All representations, warranties, covenants, liabilities and obligations of a Covered Entity under this Agreement are several, and not joint, to each Covered Entity. No Covered Entity will be liable for any breach, default, liability or other obligation of another Covered Entity.

**5.17 Conflict.** If there is an inconsistency between the provisions of this Agreement and the HIPAA Privacy and Security Rules, as may be amended from time to time by the Secretary or as a result of interpretations by HHS, a court, or another regulatory agency, the HIPAA Privacy and Security Rules will prevail. If there is a conflict among the interpretation of these entities, the conflict will be resolved in accordance with rules of precedence. If there is an inconsistency between the provisions of this Agreement and the underlying agreement, this Agreement will prevail as it relates to the subject matter of this Agreement.



**MCLAREN HEALTH PLAN, INC.,  
MCLAREN HEALTH PLAN COMMUNITY,  
INC., AND HEALTH ADVANTAGE, INC.**



**Covered Entity**

**Business Associate**

By: \_\_\_\_\_  
Nancy Jenkins  
On behalf of the above named entities

By: \_\_\_\_\_

Its: President and CEO

Its:

Date: \_\_\_\_\_

Date: \_\_\_\_\_